IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1469

LONNIE NORTH ..... APPELLANT

VS.

C. B. KESSEL AND NATHANIEL "TRAP" HELTON, JAILER OF HARLAN COUNTY ..... APPELLEES

ON APPEAL FROM THE COURT OF APPEALS OF KENTUCKY

SUPPLEMENTAL BRIEF FOR APPELLEES

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October Term, 1974

No. 74-1409

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VS.

C. B. RUSSELL AND NATHANIEL "TRAP" HELTON, JAILER OF HARLAN COUNTY ..... APPELLEES

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MAY IT PLEASE THE COURT:

RECENT DEVELOPMENTS IN JUDICIAL REFORM IN THE COMMONWEALTH OF KENTUCKY.

The purpose of this supplemental brief for the appellees in this case is to inform the Court of recent developments in judicial reform in the Commonwealth of Kentucky within the ambit of the Tenth Amendment to the Federal Constitution authorization to the states to develop their own court systems.

The General Assembly of the Commonwealth of Kentucky at its 1974 session, by Senate Bill 183, enacted an act proposing an amendment to the Constitution of Kentucky relating to the Judicial Branch of Government. This act proposed the repealing of certain sections of the Constitution of Kentucky and enacting in lieu thereof provisions relative to the judicial power of the Commonwealth. Following, in its entirety, is Senate Bill 183:

"Acts of the General Assembly
CHAPTER 84
(S.B. 183)

AN ACT proposing an amendment to the Constitution of Kentucky relating to the Judicial Branch of Government.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. It is proposed that the present Constitution of Kentucky be amended by repealing present Sections 109 through 139, 141 and 143, and enacting in lieu thereof provisions to read, be numbered and be entitled as follows:

THE JUDICIAL DEPARTMENT

Section 109. *The judicial power; unified system; impeachment.* The judicial power of the Commonwealth shall be vested exclusively in one Court of Justice which shall be divided into a Supreme Court, a Court of Appeals, a trial court of general jurisdiction known as the Circuit Court and a trial court of limited jurisdiction known as the District Court. The court shall constitute a unified judicial system for operation and administration. The impeachment powers of the General Assembly shall remain inviolate.

The Supreme Court

Section 110. *Composition; jurisdiction; quorum; special justices; districts; Chief Justice.* (1) The Supreme Court shall consist of the Chief Justice of the Commonwealth and six Associate Justices.

(2)(a) The Supreme Court shall have appellate jurisdiction only, except it shall have the power to issue all writs necessary in aid of its appellate jurisdiction, or the complete determination of any cause, or as may be required to exercise control of the Court of Justice.

(b) Appeals from a judgment of the Circuit Court imposing a sentence of death or life imprisonment or imprisonment for twenty years or more shall be taken directly to the Supreme Court. In all other cases, criminal and civil, the Supreme Court shall exercise appellate jurisdiction as provided by its rules.

(3) A majority of the Justices of the Supreme Court shall constitute a quorum for the transaction of business. If as many as two Justices decline or are unable to sit in the trial of any cause, the Chief Justice shall certify that fact to the Governor, who shall appoint to try the particular cause a sufficient number of Justices to constitute a full court for the trial of the cause.

(4) The Court of Appeals districts existing on the effective date of this amendment to the Constitution shall constitute the initial Supreme Court districts. The General Assembly thereafter may redistrict the Commonwealth, by counties, into seven Supreme Court districts as nearly equal in population and as compact in form as possible. There shall be one Justice from each Supreme Court district.

(5)(a) The Justices of the Supreme Court shall

elect one of their number to serve as Chief Justice for a term of four years.

(b) The Chief Justice of the Commonwealth shall be the executive head of the Court of Justice and he shall appoint such administrative assistants as he deems necessary. He shall assign temporarily any Justice or Judge of the Commonwealth, active or retired, to sit in any Court other than the Supreme Court when he deems such assignment necessary for the prompt disposition of causes. The Chief Justice shall submit the budget for the Court of Justice and perform all other necessary administrative functions relating to the court.

The Court of Appeals

Section 111. *Composition*; *jurisdiction*; *administration*; *panels.* (1) The Court of Appeals shall consist initially of fourteen judges, an equal number to be selected from each Supreme Court district. The number of judges thereafter shall be determined from time to time by the General Assembly upon certification of necessity by the Supreme Court.

(2) The Court of Appeals shall have appellate jurisdiction only, except that it may be authorized by rules of the Supreme Court to review directly decisions of administrative agencies of the Commonwealth, and it may issue all writs necessary in aid of its appellate jurisdiction, or the complete determination of any cause within its appellate jurisdiction. In all other cases, it shall exercise appellate jurisdiction as provided by law.

(3) The Judges of the Court of Appeals shall elect one of their number to serve as Chief Judge for a term of four years. The Chief Judge shall exercise such authority and perform such duties in the administration of

the Court of Appeals as are prescribed in this section or as may be prescribed by the Supreme Court.

(4) The Court of Appeals shall divide itself into panels of not less than three judges. A panel may decide a cause by the concurring vote of a majority of its Judges. The Chief Judge shall make assignments of Judges to panels. The Court of Appeals shall prescribe the times and places in the Commonwealth at which each panel shall sit.

The Circuit Court

Section 112. *Location*; *circuits*; *composition*; *administration*; *jurisdiction.* (1) Circuit Court shall be held in each county.

(2) The Circuit Court Districts existing on the effective date of this amendment to the Constitution shall continue under the name Judicial Circuits, the General Assembly having power upon certification of the necessity therefor by the Supreme Court to reduce, increase or rearrange the Judicial Districts. A Judicial Circuit composed of more than one county shall be as compact in form as possible and of contiguous counties. No county shall be divided in creating a Judicial Circuit.

(3) The number of Circuit Judges in each district existing on the effective date of this amendment shall continue, the General Assembly having power upon certification of the necessity therefor by the Supreme Court, to change the number of Circuit Judges in any Judicial Circuit.

(4) In a Judicial Circuit having only one Judge, he shall be the Chief Judge. In Judicial Circuits having two or more Judges, they shall select bienially a Chief Judge, and if they fail to do so within a reasonable time,

the Supreme Court shall designate the Chief Judge. The Chief Judge shall exercise such authority and perform such duties in the administration of his Judicial Circuit as may be prescribed by the Supreme Court. The Supreme Court may provide by rules for administration of Judicial Circuits by regions designated by it.

(5) The Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court. It shall have such appellate jurisdiction as may be provided by law.

The District Court

Section 113. *Location; districts; composition; administration; trial commissioners; jurisdiction.*

(1) District Court shall be held in each county.

(2) The Circuit Court Districts existing on the effective date of this amendment shall continue for District Court purposes under the name 'Judicial Districts,' the General Assembly having power upon certification of the necessity therefor by the Supreme Court to reduce, increase or rearrange the districts. A Judicial District composed of more than one county shall be as compact in form as possible and of contiguous counties. No county shall be divided in creating a Judicial District.

(3) Each Judicial District created by this amendment initially shall have at least one District Judge who shall serve as Chief Judge and there shall be such other District Judges as the General Assembly shall determine. The number of District Judges in each Judicial District thereafter shall be determined by the General Assembly upon certification of necessity therefor by the Supreme Court.

(4) In a Judicial District having only one Judge

he shall be the Chief Judge. In those districts having two or more Judges they shall select biennially a Chief Judge and if they fail to do so within a reasonable time, the Supreme Court shall designate the Chief Judge. The Chief Judge shall exercise such authority and perform such duties in the administration of his district as may be prescribed by the Supreme Court.

(5) In any county in which no District Judge resides the Chief Judge of the district shall appoint a Trial Commissioner who shall be a resident of such county and who shall be an attorney if one is qualified and available. Other Trial Commissioners with like qualifications may be appointed by the Chief Judge in any Judicial District upon certification of the necessity therefor by the Supreme Court. All Trial Commissioners shall have power to perform such duties of the District Court as may be prescribed by the Supreme Court.

(6) The District Court shall be a court of limited jurisdiction and shall exercise original jurisdiction as may be provided by the General Assembly.

Clerks of Courts

Section 114. *Selection; removal.* (1) The Supreme Court shall appoint a clerk to serve as it shall determine.

(2) The Court of Appeals shall appoint a clerk to serve as it shall determine.

(3) The clerks of the Circuit Court shall be elected in the manner provided elsewhere in this Constitution. The clerks of the Circuit Court shall serve as the clerks of the District Court. The clerks of the Circuit Court shall be removable from office by the Supreme Court upon good cause shown.

Appellate Policy; Rule-Making Power

Section 115. *Right of appeal; procedure.* In all cases, civil and criminal, there shall be allowed as a matter of right at least one appeal to another court, except that the Commonwealth may not appeal from a judgment of acquittal in a criminal case, other than for the purpose of securing a certification of law, and the General Assembly may prescribe that there shall be no appeal from that portion of a judgment dissolving a marriage. Procedural rules shall provide for expeditious and inexpensive appeals. Appeals shall be upon the record and not by trial de novo.

Section 116. *Rules governing jurisdiction, personnel, procedure, Bar membership.* The Supreme Court shall have the power to prescribe rules governing its appellate jurisdiction, rules for the appointment of commissioners and other court personnel, and rules of practice and procedure for the Court of Justice. The Supreme Court shall, by rule, govern admission to the Bar and the discipline of members of the Bar.

Offices of Justices and Judges

Section 117. *Election.* Justices of the Supreme Court and Judges of the Court of Appeals, Circuit and District Court shall be elected from their respective districts or circuits on a nonpartisan basis as provided by law.

Section 118. *Vacancies.* (1) A vacancy in the office of a Justice of the Supreme Court, or of a Judge of the Court of Appeals, Circuit or District Court which under Section 152 of this Constitution is to be filled by appointment by the Governor shall be filled by the Governor from a list of three names presented to him by the appropriate Judicial Nominating Commission. If the Gov-

ernor fails to make an appointment from the list within sixty days from the date it is presented to him, the appointment shall be made from the same list by the Chief Justice of the Supreme Court.

(2) There shall be one Judicial Nominating Commission for the Supreme Court and the Court of Appeals, one for each Judicial Circuit, and one for each Judicial District, except that a circuit and district having the same boundary shall have but one Judicial Nominating Commission. Each commission shall consist of seven members, one of whom shall be the Chief Justice of the Supreme Court, who shall be chairman. Two members of each commission shall be members of the Bar, who shall be elected by their fellow members. The other four members shall be appointed by the Governor from among persons not members of the Bar, and these four shall include at least two members of each of the two political parties of the Commonwealth having the largest number of voters. Members of a Judicial Circuit or Judicial District Nominating Commission must be residents of the circuit or district, respectively, and the lawyer members of the commission shall be elected by the members of the Bar residing in the circuit or district, respectively. The terms of office of members of Judicial Nominating Commissions shall be fixed by the General Assembly. No person shall be elected or appointed a member of a Judicial Nominating Commission who holds any other public office or any office in a political party or organization.

Section 119. *Terms of office.* Justices of the Supreme Court and Judges of the Court of Appeals and Circuit Court shall severally hold their offices for terms of eight

years, and Judges of the District Court for terms of four years. All terms commence on the first Monday in January next succeeding the regular election for the office. No Justice or Judge may be deprived of his term of office by redistricting, or by a reduction in the number of Justices or Judges.

Section 120. *Compensation; expenses.* All Justices and Judges shall be paid adequate compensation which shall be fixed by the General Assembly. All compensation and necessary expenses of the Court of Justice shall be paid out of the State Treasury. The compensation of a Justice or Judge shall not be reduced during his term.

Section 121. *Retirement and removal.* Subject to rules of procedure to be established by the Supreme Court, and after notice and hearing, any Justice of the Supreme Court or Judge of the Court of Appeals, Circuit Court or District Court may be retired for disability or suspended without pay or removed for good cause by a commission composed of one Judge of the Court of Appeals, selected by that Court, one Circuit Judge and one District Judge selected by a majority vote of the Circuit Judges and District Judges, respectively, one member of the Bar appointed by its governing body, and two persons, not members of the Bench or Bar, appointed by the Governor. The commission shall be a State body whose members shall hold office for four-year terms. Its actions shall be subject to judicial review by the Supreme Court.

Section 122. *Eligibility.* To be eligible to serve as a Justice of the Supreme Court or a Judge of the Court of Appeals, Circuit Court or District Court a person must be a citizen of the United States, licensed to practice law

in the Courts of this Commonwealth, and have been a resident of this Commonwealth and of the district from which he is elected for two years next preceding his taking office. In addition, to be eligible to serve as a Justice of the Supreme Court or Judge of the Court of Appeals or Circuit Court a person must have been a licensed attorney for at least eight years. No District Judge shall serve who his not been a licensed attorney for at least two years.

Section 123. *Prohibited activities.* During his term of office, no Justice of the Supreme Court or Judge of the Court of Appeals, Circuit Court or District Court shall engage in the practice of law, or run for elective office other than judicial office, or hold any office in a political party or organization.

Section 124. *Conflicting provisions.* Any remaining sections of the Constitution of Kentucky as it existed prior to the effective date of this amendment which are in conflict with the provisions of amended Sections 110 through 125 are repealed to the extent of the conflict, but such amended sections are not intended to repeal those parts of Sections 140 and 142 conferring nonjudicial powers and duties upon County Judges and Justices of the Peace. Nothing in such amended sections shall be construed to limit the powers otherwise granted by this Constitution to the County Judge as the chief executive, administrative and fiscal officer of the county, or to limit the powers otherwise granted by the Constitution to the Justices of the Peace or County Commissioners as executive, administrative and fiscal officers of a county, or of the Fiscal Court as a governing body of a county.

Section 2. It further is proposed as a part of this

amendment and as a schedule of transitional provisions, for the purposes of this amendment, that:

1. The Judges of the Court of Appeals in office on the effective date of this amendment shall become Justices of the Supreme Court, for the duration of their terms, and the election of successors shall be in accordance with those terms.

2. The Circuit Judges in office on the effective date of this amendment shall be continued therein for the duration of their terms. The term of office of eight years provided in this amendment for Circuit Judges shall apply to the Circuit Judges elected at the election at which this amendment is adopted.

3. The term of office of Judges of the Court of Appeals created by this amendment shall be deemed to commence as of the first Monday in January, 1976. The vacancies existing on that date by virtue of no election having been held for the office in November, 1975 shall be filled in accordance with Section 152 of the present Constitution and Section 118 as created by this amendment.

4. The term of office of Judges of the District Court shall be deemed to commence as of the first Monday in January, 1978, and judges shall be elected at the regular election next preceding that date. The District Court shall be constituted and organized as of the first Monday in January, 1978.

5. The quarterly courts, county courts as judicial bodies, justices' courts and police courts in existence on the effective date of this amendment shall continue in

existence until the first Monday in January, 1978. For that period those courts shall continue to be governed by the present Constitution and none of the provisions of this amendment shall apply to them, except that those courts shall be deemed a part of the unified judicial system and shall be subject to the general control and rule-making power of the Supreme Court. The terms of any police court judges which commence on the first Monday in January, 1976, shall be reduced to two years from that date.

6. The Clerk of the Court of Appeals elected at the election at which this amendment is adopted shall serve as Clerk of the Supreme Court for the term for which he was elected, subject to removal by the Supreme Court for good cause.

7. Until otherwise provided by law the statutes applicable to the present Court of Appeals and not inconsistent with this amendment shall apply to the Supreme Court.

8. All causes and proceedings pending in the present Court of Appeals on the effective date of this amendment are transferred to and shall be decided or otherwise disposed of by the Supreme Court.

9. All causes and proceedings pending in the quarterly courts, county courts as judicial bodies, justices' courts and police courts, on the first Monday in January, 1978, shall then be transferred to and decided by the Circuit Court or the District Court of the area, in accordance with the respective jurisdictions prescribed for the latter courts.

Section 3. This amendment shall be submitted to

the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for in Sections 256 and 257 of the Constitution of Kentucky and in KRS 119.420, and if so ratified, shall become effective on January 1, 1976.

Approved March 20, 1974"

As mandated by Section 3 of Senate Bill 183, the so-called "Judicial Amendment" for changing the state court system, was submitted to the voters of the Commonwealth for their ratification or rejection on the ballot at the November 4, 1975, election. Kentucky voters passed the Judicial Amendment to the Kentucky Constitution.

The effective date of this Judicial Amendment will be January 1, 1976. However, only the upper three tiers of the four-tier unified system, that is, the Supreme Court, the Court of Appeals, and Circuit Courts, will actually come into effect on January 1, 1976. The fourth and lowest tier, that of the District Courts, will not commence until the first Monday in January 1978 (January 2, 1978). Therefore, all county, quarterly, justice of the peace and police courts will cease to exist at midnight on January 1, 1978.

The provisions of the Judicial Amendment will be beneficial to the bench, the bar, and the citizens of the Commonwealth. The most far-reaching provision of the Judicial Amendment calls for the present county, police and justice's courts, the so-called inferior court system of the Commonwealth, to be combined into one District Court so that there would be one District Court in each county to handle the cases now handled by these lower

courts. See Section 113 of the Judicial Amendment, supra. The cases generally handled by the present inferior court system involve small amounts of money ($500 or less), light criminal penalties (less than twelve months in jail or $500 or both) and other matters such as probate and juvenile.

Moreover, the Judicial Amendment provides for there to be at least one District Judge to be elected in each judicial district, of which there are now existing fifty-five. See Judicial Amendment, Section 113(2), supra. In that a judicial district may be composed of more than one county, there being one hundred twenty counties in the Commonwealth, there may be some counties in which no District Judge resides. The Judicial Amendment, Section 113, in order to provide each county with local courts, requires that the District Judge in these multi-county districts appoint a resident of each county in which no District Court Judge resides to be a Trial Commissioner. The Trial Commissioner must be an attorney if one is qualified and available and would have the power to perform such duties of the District Court as may be prescribed by the Supreme Court. See Judicial Amendment, Section 113(5), supra. It reasonably follows that the new Supreme Court of the Commonwealth will likely provide that the Trial Commissioner can perform all duties of the District Judge who made the appointment.

The degree of impact of the new Judicial Amendment upon the Judicial Branch of Government in the Commonwealth of Kentucky cannot at this point in time be readily measured. Two years will pass before the most

far-reaching provisions for District Courts will go into effect. For that two-year period the present inferior courts, including police courts, shall continue to be governed by the present Constitution and none of the provisions of the Judicial Amendment will apply to these inferior courts except that these courts shall be deemed a part of the unified judicial system and will be subject to the general control and rule-making power of the Supreme Court. Senate Bill 183, Section 2, paragraph 5, supra. The powers of a District Court Trial Commissioner, the recording of proceedings in the District Court, the process of appeal from the District Court, are all matters, amongst others, which must yet be addressed by the Supreme Court or the General Assembly.

The passage of the Judicial Amendment reveals that a significant number of citizens of the Commonwealth desired judicial improvement with an anticipated concomitant betterment of judicial services. Yet, we submit this Judicial Amendment ratified by the voters of the Commonwealth does not moot the basic constitutional issue of whether the Fourteenth Amendment due process and equal protection clauses require a lawyer judge in all situations where an individual charged with a criminal offense, upon conviction, may be imprisoned, which are at work in the present case. The Judicial Amendment appears to clearly authorize the possibility that a non-lawyer District Court Trial Commissioner may have the powers attendant to the lawyer District Court Judge position. We believe this Trial Commissioner provision is certainly in keeping with the right of the Commonwealth of Kentucky to establish its own judicial system under the Tenth

Amendment and also in keeping with the requirements of the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert L. Chenoweth, one of counsel for appellees, hereby certify that the foregoing Supplemental Brief for Appellees was served on appellant by depositing three copies each of same in the United States mail, first class postage prepaid, this 24th day of November, 1975, addressed to counsel for appellant, HON. CHARLES E. GOSS, Central Street, Harlan, Kentucky 40831, and HON. DEAN HILL RIVKIN, 8 Sherman Street, Cambridge, Massachusetts 02138, of Counsel.

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